

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: : CHAPTER 13
: :
RALPH D. PARSONS, JR : CASE NO. 16-60059
SHERRY C. PARSONS : :
: JUDGE RUSS KENDIG
DEBTORS. : :

**DEBTORS'MOTION TO AVOID LIEN OF WILMINGTON FINANCE, INC. /
CALIBER HOME LOANS ON REAL PROPERTY**

Now come Debtors, by and through the undersigned counsel, and request an Order of this Court avoiding the lien of Wilmington Finance, Inc. / Caliber Home Loans (hereinafter "Caliber") on their residence. Please see attached Memorandum in Support.

Respectfully submitted,

/s/Rebecca K. Hockenberry
Rebecca K. Hockenberry (0074930)
Hockenberry Law Office, LLC
PO Box 1014
Ashland, OH 44805
(614) 900-2725
(614) 737-9945 facsimile
rebecca@hockenberrylaw.com

Counsel for Debtors

MEMORANDUM IN SUPPORT

1. This matter constitutes a core proceeding pursuant to 28 U.S.C § 157.
2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 151 and 1334.
3. Debtors filed their Chapter 13 bankruptcy petition on January 18, 2016.
4. The § 341 Meeting of Creditors was held on March 7, 2016.
5. Debtors own property located at 335 Plymouth Street, Plymouth, Ohio 44865-1045 (hereinafter “the real property”) joint with right of survivorship with the following property description:

Situated in the Village of Plymouth, County of Richland and State of Ohio;

Parcel number One:

Situated in the Southerly Part of in-lot 331, Eckelberry’s subdivision, Village of Plymouth, Plymouth Township, Richland County, Ohio, and being more fully described as follows;

Beginning at an iron pipe monument set in the easterly bounds of Plymouth Street that marks the southwesterly corner of in lot 331, Village of Plymouth; thence due east along the southerly line of said in-lot 331, 245.70 feet to an iron pipe monument that marks the southeast corner thereof; thence north 1 degree – 05’ east, along the east line of said lot, 60.00 feet to an iron bar monument; thence due West, parallel with and 5.00 feet southerly from the northerly line of the above mentioned in lot 331, a distance of 246.84 feet to an iron bar monument set in the above mentioned easterly line of Plymouth Street; thence due south along the same easterly line 60.00 feet to the place of beginning, said described bounds enclose an area of one third (1/3) of an acre of land.

Parcel Number Two

Situated in the Village of Plymouth, County of Richland and State of Ohio; being known as Lot No. Three Hundred Thirty-Two (#332) and in the subdivision of out lot No. Thirty Five as shown by plan recorded in Vol. 16, Page 38 of the Richland County Plat Records.

Parcel Number Three;

Situated in the Village of Plymouth, County of Richland and State of Ohio; being a parcel off the North side by parallel Lines, the full depth of Lot #331, said parcel being five feet in dimensions, north and south, and in the subdivision of out lot no. Thirty Five as shown by Plat recorded in vo. 16, Page 38, of Richland County Plat Records.

Parcel No. 035-56-156-8-000, Parcel No. 035-56-156-06-000 and Parcel No. 035-59-156-07-000

6. The Trustee obtained an appraisal and the appraiser valued the real property at \$90,000.00. See Doc 42 attached hereto as Exhibit D.
7. Wilmington Finance, Inc., serviced by Caliber Home Loans, held a first mortgage on the property recorded as document number 200600016400 in the Richland County Recorder's Office on September 20 2016, with an approximate outstanding balance of \$127,748.96, pursuant to the statement dated December 7, 2015. See attached as Exhibit A.
8. The Citizens Banking Company nka Civista Bank (hereinafter "Civista") held a second mortgage on the property recorded as document number 200700014995 filed in the Richland County Recorder's Office on October 2, 2007, with an approximate outstanding balance of \$133,003.27. See attached as Exhibit B.
9. On November 17, 2015, Judge Brent Robinson in the Richland County Court of Common Pleas issued a Judgment Decree in Foreclosure and ordered that Caliber's mortgage, via Mortgage Electronic Registration Systems, Inc. (Caliber's nominee), has no interest in the real property and "shall be forever barred from asserting any interest in the premises." See Judgment attached as Exhibit C.
10. Based on the Judgment Decree referenced in paragraph 9 above, Civista now holds first mortgage position.
11. Debtors state that the mortgage lien held by Caliber is junior to the superior lien of Civista.
12. Debtors claimed an exemption in the real property.
13. Debtors state that there exists insufficient equity in the residential real estate to deem the mortgage in favor of Caliber as secured.
14. Pursuant to 11 U.S.C. § 506(a) and 506(d), as made applicable in this case by 11 U.S.C. § 1325(s)(5), Civista is not the holder of a secured interest as it relates to the mortgage claim as that term is defined in the United States Bankruptcy Code.

WHEREFORE, Debtors pray for an Order of this Court that:

1. The mortgage lien of Caliber, which mortgage is recorded and filed for record on September 20 2016, as document number 200600016400, be deemed avoided; that the court order the mortgage to be released and forever discharged; and that Caliber be deemed to have an unsecured claim in this case; and

2. For such other and further relief as the Court deems necessary and proper.

Respectfully submitted,

/s/Rebecca K. Hockenberry

Rebecca K. Hockenberry (0074930)

Hockenberry Law Office, LLC

PO Box 1014

Ashland, OH 44805

(614) 900-2725 (614) 737-9945 facsimile

rebecca@hockenberrylaw.com

Counsel for Debtor

NOTICE OF MOTION

Debtors Ralph and Sherry Parsons have has filed amended papers with the court for to avoid the judicial lien of Equable Ascent on her real property.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you wish to consult one).

If you do not want the court to reduce, modify, or eliminate your claim, then on or before **21 days from the date of filing, July 5, 2016** you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to 401 McKinley Avenue SW, Canton, Ohio 44702 OR your attorney must file a response using the court's ECF System.

File an answer (Memorandum in Response) and request for an oral hearing at:

U.S Bankruptcy Court
Clerk's Office
Ralph Regula Federal Building and US Courthouse
401 McKinley Ave. SW
Canton, OH 44702

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to

Rebecca K. Hockenberry, Esq.
Hockenberry Law Office, LLC
PO Box 1014
Ashland, OH 44805

Toby L Rosen, Chapter 13 Trustee
400 W. Tuscarawas Street
Charter One Bank Building, Ste 400
Canton, OH 44702

Office of the U.S. Trustee
201 Superior Avenue East, Ste. 441
Cleveland, OH 44114

If you or your attorney do not take these steps, the court may decide that you do not oppose relief sought in the motion and may enter an order granting relief.

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2016, a true and correct copy of **AMENDED DEBTORS' MOTION TO AVOID LIEN OF WILMINGTON FINANCE, INC. / CALIBER HOME LOANS ON REAL PROPERTY and NOTICE** were served:

Via the court's Electronic Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:

- Toby L. Rosen, Chapter 13 Trustee, at trosen@chapter13canton.com, trosen@ecf.epiqsystems.com
- Jeffrey B. Sams, on behalf of The Citizens Banking Company, nka Civista Bank, at JSams@JeffSamsLaw.com
- Richard P. Schroeter, on behalf of State of Ohio Department of Taxation, at rschroeter@amer-collect.com, crogers@amer-collect.com; HouliECF@aol.com
- C. Richard Thompson, co-counsel for Debtors, at crtco@earthlink.net
- United States Trustee (Registered address)@usdoj.gov
- Toby L Rosen trose14 rseiler@chapter13canton.com

and by regular U.S. Mail, postage prepaid, on:

Stanley L. Baumberger
Baumberger Appraisal
69 Eleanor Avenue
Mansfield, OH 44906

David Cliff, Esq.
Weltman, Weinberg & Reis Co., LPA
525 Vine Street #800
Cincinnati, OH 45202

Caliber Home Loans
PO Box 24610
Oklahoma City, OK 73124

VIA CERTIFIED MAIL
Wilmington Finance, Inc.
401 Plymouth Road, Suite 400
Plymouth Meeting, PA 19462
Attn: George Roach, President & CEO

/s/Rebecca K. Hockenberry
Rebecca K. Hockenberry 0074930
Hockenberry Law Office, LLC
PO Box 1014
Ashland, OH 44805
(614) 900-2727 telephone
(614) 737-9945 facsimile
rebecca@hockenberrylaw.com